

E-FILED on 4/4/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RONALD J. PLAGA

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

No. C-09-01194 RMW

ORDER GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF ATTORNEY FEES
PURSUANT TO 42 U.S.C. § 406(b)**[Re Docket No. 25]**

Plaintiff's attorney, Dolly M. Trompeter ("counsel"), moves for approval of attorney fees pursuant to the Social Security Act, 42 U.S.C. § 406(b). Counsel requests a total award of \$25,514, which is 25 percent of the past-due benefits awarded to plaintiff on remand. Pursuant to the parties' stipulation, counsel was previously awarded \$5,000 in EAJA fees, which she would pay to plaintiff upon receiving the total requested award. Defendant Commissioner of Social Security ("Commissioner") states that, because it was not a party to the contingent-fee agreement between counsel and plaintiff, it is not in a position to either assent or object to the requested fees. The Commissioner nonetheless offers an analysis of the request because the Supreme Court has held that the Commissioner has a role "resembling that of a trustee" for plaintiff.

This court has discretion in evaluating a request for fees under § 406(b). *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009). In making the fee determination, the court must look first to the contingent-fee agreement and then test it for reasonableness. *Id.* (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002)). "A fee resulting from a contingent-fee agreement is unreasonable, and thus subject to reduction by the court, if the attorney provided substandard representation or engaged in dilatory conduct in order to increase the accrued amount of past-due benefits, or if the 'benefits are large in comparison to the amount of time counsel spent on the case.'" *Id.* at 1148 (quoting *Gisbrecht*, 535 U.S. at 807).

Here, plaintiff agreed to a 25 percent contingent-fee arrangement, and the agreement was approved by the ALJ on remand. There is no indication that counsel provided substandard representation or engaged in dilatory conduct; to the contrary, plaintiff states that he is "very satisfied" with counsel's work and it appears counsel was able to speed the progress of the case by persuading defendant to support voluntary remand. Based on counsel's records of her time spent representing plaintiff before this court, the requested fees equate to an hourly rate of \$619.27 (\$25,514 / 41.2 hours). This appears to be comfortably within the range of effective hourly rates that courts have approved. *See, e.g., Crawford*, 586 F.3d at 1153 (approving fee awards equating to effective hourly rates of \$519, \$875, and \$902).

Thus, the court finds that the requested fees are reasonable and hereby orders the Social Security Administration to pay directly to plaintiff's attorney, Dolly M. Trompeter, the total sum of \$25,514 for attorney fees pursuant to 42 U.S.C. § 406(b), \$5,000 of which she shall pay to plaintiff Ronald Plaga in light of the previous EAJA award.

DATED: April 4, 2012


RONALD M. WHYTE
United States District Judge